



September 10, 2010

EX PARTE BY ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Michael B. Hazzard

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*Re: Developing a Unified Intercarrier Compensation Regime, WC Docket No. 01-92, and
Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket
No. 07-135*

Dear Secretary Dortch:

Pac-West Telecomm, Inc. ("Pac-West") hereby submits this notice of ex parte regarding its meeting with Wireline Competition Bureau staff on September 9, 2010. Jennifer Eubanks, Jim Falvey, and the undersigned attended the meeting on behalf of Pac-West. John Hunter, Jay Atkinson, Dan Ball, Randy Clarke, and Lynne Engledow attended the meeting on behalf of the Bureau.

During the meeting, Pac-West emphasized its support for principled intercarrier compensation reform. Pac-West noted that the Commission has repeatedly found that the cost of terminating telecommunications traffic does not vary by geography or traffic type, and no contrary evidence exists in the record. The Commission's reform efforts should build on these longstanding findings.

Pac-West also described the difficulties of obtaining intraMTA traffic termination agreements with wireless carriers. Pac-West has been able to obtain voluntarily-negotiated agreements with some wireless carriers. Others refuse to enter agreements, which results in expensive and time consuming litigation. Pac-West distributed the complaint (attached hereto) it filed against Verizon Wireless at the California Public Utilities Commission.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "MTH", with a large, stylized flourish extending from the end of the signature.

Michael B. Hazzard
Counsel to Pac-West Telecomm, Inc.

Arent Fox

Attachment

cc: John Hunter (John.Hunter@fcc.gov)
Jay Atkinson (Jay.Atkinson@fcc.gov)
Dan Ball (daniel.ball@fcc.gov)
Randy Clarke (randy.clarke@fcc.gov)
Lynne Engledow (lynne.engledow@fcc.gov)

ATTACHMENT

**FILED**01-25-10
04:59 PM

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Pac-West Telecomm, Inc. (U5266C),

Complainant

vs.

Cellco Partnership (U3001C), Los Angeles SMSA Limited Partnership (U3003C), Verizon Wireless, LLC (U3029C), Fresno MSA Ltd. Partnership (U3005C), Sacramento Valley Ltd. Partnership (U3004C), GTE Mobilnet of CA, Ltd. Partnership (U3002C), GTE Mobilnet of Santa Barbara (U3011C), Modoc RSA Limited Partnership (U3032C), and California RSA No. 4 Ltd. Partnership (U3038C) jointly dba Verizon Wireless

Defendant

C1001021

C. _____

COMPLAINT

Pac-West Telecomm, Inc. (U5266C) ("Pac-West") brings this Complaint against Cellco Partnership (U3001C), Los Angeles SMSA Limited Partnership (U3003C), Verizon Wireless, LLC (U3029C), Fresno MSA Ltd. Partnership (U3005C), Sacramento Valley Ltd. Partnership (U3004C), GTE Mobilnet of CA, Ltd. Partnership (U3002C), GTE Mobilnet of Santa Barbara (U3011C), Modoc RSA Limited Partnership (U3032C), and California RSA No. 4 Ltd. Partnership (U3038C) jointly dba Verizon Wireless (referred to collectively and individually as "the Verizon Wireless carriers") pursuant to the California Public Utilities Code ("P.U. Code") Section 1702 and Article 4 of the Rules of Practice and Procedure of the Public Utilities Commission of the State of California (the "Commission").

I. SUMMARY AND BACKGROUND

1. This Complaint arises due to the Verizon Wireless carriers' refusal to pay reasonable compensation to Pac-West for termination of the Verizon Wireless carriers' telecommunications traffic in violation of the P.U. Code, Commission decisions, and rules and orders of the Federal Communications Commission ("FCC"). These charges are owed by the Verizon Wireless carriers pursuant to state and federal law, and are normally billed to carriers that are sending traffic to Pac-West for termination, but that do not have interconnection agreements with Pac-West, pursuant to Pac-West's intrastate tariff.¹ However, the FCC has recently ruled that, if the originating carrier is a commercial mobile radio service ("CMRS") carrier, this Commission must determine the reasonable rate of compensation due Pac-West instead of simply enforcing the Pac-West Intrastate Tariff, because Pac-West is a competitive local exchange ("CLEC").² Pac-West's Intrastate Tariff contains such reasonable charges, and the Commission should adopt these charges as those applicable to termination by Pac-West of the Verizon Wireless carriers' traffic.

2. Pac-West has attempted to resolve this matter by negotiation with the Verizon Wireless carriers but those efforts have not been successful.

3. Pac-West is a CLEC and interexchange ("IXC") carrier offering telecommunications services to subscribers in California. As a CLEC, Pac-West provides its customers with the ability to originate and receive local, intraLATA, interLATA, intrastate, and interstate dialed calls. Pac-West also provides its customers with the ability to receive intraMTA and interMTA CMRS calls.

¹ See Pac-West's Commission approved Schedule Cal. CLC 1-T, Fourth Revised Cal. P.U.C. CLC 1-T Sheet No. 134, Section 12.1.2, effective February 1, 2008 and Fifth Revised Cal. P.U.C. CLC 1-T Sheet No. 136, Section 13.1, effective January 1, 2009 (hereafter "Pac-West's Intrastate Tariff").

² See *North County Communications Corp. v. MetroPCS California, LLC*, Order on Review, FCC 09-100 (rel. Nov. 19, 2009), a copy of which is attached hereto as Attachment A.

4. In the execution of its responsibilities as a CLEC, Pac-West terminates (i.e., completes) calls to its customers that are delivered to it by wireless, local exchange, or IXC carriers whether or not Pac-West has an interconnection agreement with the originating carrier. In the case of originating carriers with whom Pac-West has executed interconnection agreements, the traffic is terminated pursuant to such agreements. For calls delivered to it by wireless, local exchange, or IXC carriers who have not executed interconnection agreements with Pac-West, Pac-West nevertheless meets its legal obligation as a CLEC and terminates these calls to its customers and pursues payment arrangements thereafter.

5. Even if Pac-West has an interconnection agreement with a particular originating carrier, there may be no direct physical interconnection of the two networks. In such instances the originating carrier's customers' calls are routed, or "transited," to Pac-West through another carrier, typically one of the major incumbent local exchange carriers ("ILECs") in California.³

6. The Verizon Wireless carriers are CMRS providers certificated as a telephone corporations and public utilities by the Commission and operating to provide service in California. The Verizon Wireless carriers' customers originate traffic that is delivered to Pac-West for termination to Pac-West's customers. Pac-West and the Verizon Wireless carriers do not directly connect their networks. Rather, the Verizon Wireless carriers' traffic is routed to Pac-West via one of the ILECs with whom both companies interconnect.

³ All or virtually all of the traffic subject to this complaint terminates to Pac-West through the networks of one of the major incumbent local exchange carriers in California, either Pacific Bell Telephone Company d/b/a AT&T California (hereinafter "AT&T California") or Verizon California, Inc (together the "major ILECs"). However, the legal analysis and result regarding the substance of this complaint does not change regardless of the identity of the incumbent local exchange carrier whose network the traffic is transited through for termination to Pac-West.

7. The Verizon Wireless carriers, as CMRS providers, are required to pay reasonable compensation to a local exchange carrier in connection with terminating calls that originate on the Verizon Wireless carriers' facilities. Pac-West and the Verizon Wireless carriers have been unable to agree upon the amount of such reasonable compensation, and Pac-West seeks Commission resolution of this dispute.

II. CATEGORY OF PROCEEDING, NEED FOR HEARING, ISSUES AND PROPOSED SCHEDULE

8. Because this is a formal complaint the proposed category for the proceeding is adjudicatory. An opportunity for hearing is necessary. The issues are:

a. Whether Pac-West's Commission-approved and presumptively reasonable tariffed rates for termination of switched access and local traffic establish reasonable compensation to Pac-West for terminating intraMTA and interMTA traffic that originated from the Verizon Wireless carriers, and

b. Whether the Verizon Wireless carriers should be ordered to pay the amounts properly due and owing for termination services provided to them by Pac-West, including applicable late payment charges.

Pac-West proposes the following schedule for this proceeding:

Service of Complaint	Day 1
Answer	Day 31
Prehearing Conference	Day 50
Complainant's Opening Testimony	Day 110
Defendants' Reply Testimony	Day 140
Complainant's Rebuttal Testimony	Day 160
Hearing	Day 180
Complainant's Opening Post-hearing Brief	Day 210

Defendants' Reply Brief Day 240

Complainant's Rebuttal Brief Day 260

III. PARTIES

9. Complainant Pac-West is a corporation organized under the laws of the State of California. Pac-West is authorized by the Commission to provide facilities-based and resold competitive local exchange and interexchange services in California.

10. The address and telephone number for Pac-West is:

Pac-West Telecomm, Inc.
4210 Coronado Avenue
Stockton, CA 95204
(209) 926-3300 (telephone)
(209) 926-4585 (facsimile)
Email: lmartin@pacwest.com

11. All pleadings, correspondence, and other communications concerning this complaint should be sent to Pac-West and its attorneys at the following address:

James M. Tobin
William C. Harrelson
August O. Stofferahn
Tobin Law Group
1628 Tiburon Blvd.
Tiburon, CA 94920
(415) 732-1700 (telephone)
(415) 789-0276 (facsimile)
Email: jim@tobinlaw.us

with a copy to:

Denis McCarthy
Chief Financial Officer
Pac-West Telecomm, Inc.
555 12th Street, Suite 250
Oakland, CA 94607
(510) 380-5964 (telephone)
(510) 380-5955 (facsimile)
Email: dmccarthy@pacwest.com

12. Upon information and belief, Defendants Cellco Partnership (U3001C), GTE Mobilnet of CA, Ltd. Partnership (U3002C), and GTE Mobilnet of Santa Barbara (U3011C)

are Delaware partnerships; Verizon Wireless, LLC (U3029C) is a Delaware limited liability company; Los Angeles SMSA Limited Partnership (U3003C), Fresno MSA Ltd. Partnership (U3005C), Modoc RSA Limited Partnership (U3032C), Sacramento Valley Ltd. Partnership (U3004C), and California RSA No. 4 Ltd. Partnership (U3038C) are California partnerships that jointly do business as Verizon Wireless. The Verizon Wireless carriers are commercial mobile radio service ("CMRS") providers certificated by the Commission and operating to provide service in California.

13. Upon information and belief, the address and telephone number for each of the Verizon Wireless carriers is:

Cellco Partnership
180 Washington Valley Road
Bedminster, NJ 07921
(908) 306-4239
Email: jianhua.ma@verizonwireless.com

Los Angeles SMSA Limited Partnership
180 Washington Valley Road
Bedminster, NJ 07921
(908) 306-4239
Email: jianhua.ma@verizonwireless.com

Verizon Wireless, LLC
180 Washington Valley Road
Bedminster, NJ 07921
(908) 306-4239
Email: jianhua.ma@verizonwireless.com

Fresno MSA Ltd. Partnership
180 Washington Valley Road
Bedminster, NJ 07921
(908) 306-4239
Email: jianhua.ma@verizonwireless.com

Sacramento Valley Ltd. Partnership
180 Washington Valley Road
Bedminster, NJ 07921
(908) 306-4239
Email: jianhua.ma@verizonwireless.com

GTE Mobilnet of CA, Ltd. Partnership
180 Washington Valley Road
Bedminster, NJ 07921
(908) 306-4239
Email: jianhua.ma@verizonwireless.com

GTE Mobilnet of Santa Barbara
180 Washington Valley Road
Bedminster, NJ 07921
(908) 306-4239
Email: jianhua.ma@verizonwireless.com

Modoc RSA Limited Partnership
180 Washington Valley Road
Bedminster, NJ 07921
(908) 306-4239
Email: jianhua.ma@verizonwireless.com

California RSA No. 4 Ltd. Partnership
180 Washington Valley Road
Bedminster, NJ 07921
(908) 306-4239
Email: jianhua.ma@verizonwireless.com

Upon information and belief, contact information for counsel for the Verizon wireless carriers is:

Verizon Wireless
1300 I Street, NW - Suite 400 West
Washington, DC 20005
Telephone: (202) 589-3790

IV. JURISDICTION

14. Sections 701, 1702, and 1707 of the P.U. Code provide the Commission with jurisdiction over breaches by California utilities of the P.U. Code and Commission decisions, rules, and policies.

15. Pursuant to 47 U.S.C. Section 152(b) and 47 C.F.R. Section 20.11, the Commission has jurisdiction over rates for intrastate wireless telecommunications services.

16. Pac-West is a California public utility subject to the P.U. Code.

17. The Verizon Wireless carriers are California public utilities subject to the P.U. Code.

18. The Verizon Wireless carriers have violated the P.U. Code and federal law as set forth below.

V. GENERAL FACTUAL ALLEGATIONS

19. This Complaint involves the Verizon Wireless carriers' refusal to pay Pac-West for terminating traffic that the Verizon Wireless carriers originate and route for termination to Pac-West.

20. Pac-West interconnects directly with the major ILECs pursuant to Commission approved interconnection agreements. Similarly, the Verizon Wireless carriers interconnect directly with or otherwise uses the network facilities of one or more ILECs in order to provide its telecommunications services.

21. Pac-West can identify the carriers originating traffic that carriers terminate to Pac-West by analyzing the call detail record ("CDR") for each call or by means of a report created by the ILECs for this purpose, known as Exchange Message Interface or "EMI" records. The ILECs provide Pac West with either a "Category 11" or "Category 50" record⁴ for each call that originates with another carrier, transits an ILEC's network, and terminates

⁴ Category 11 or Category 50 records reflect calls transiting an incumbent local exchange carrier's network to Pac-West from another carrier. Category 11 records are currently the industry standard for transit traffic identification. The Category 50 records were the prior industry standard. Verizon California, Inc. uses Category 11 but AT&T California continues to use Category 50 records for transit traffic it delivers to facilities-based local exchange companies, such as Pac-West. These records are generated when, for example, a Verizon Wireless customer places a call that is switched through AT&T California's network and terminates to a Pac-West customer. In this example, AT&T California will bill Verizon Wireless the appropriate charges for the switching and transport of Verizon Wireless' traffic and AT&T California will then send Pac-West a Category 50 Record, which gives Pac-West the information necessary to bill Verizon Wireless the terminating charges for this call. The originating local exchange carrier is identified by Operating Company Number ("OCN") in the call record at fields 167-170. Transit traffic can be identified because the record contains an OCN other than the carrier that is providing the record. For example, when AT&T California provides Pac-West with a Category 50 record that identifies Verizon Wireless' OCN, then Pac-West can tell that this call record reflects traffic that was originated by Verizon Wireless and transited by AT&T California. Pac-West is able to segregate that traffic from traffic originated by AT&T California or other carriers and separately invoice the true originating carrier.

to a Pac-West customer. Additionally, carriers exchange call detail information via the SS7 network.

22. Between November 2007 and November 2009, the Verizon Wireless carriers have delivered over 50 million calls and over 268 million minutes of traffic to Pac-West for termination to Pac-West customers. The Verizon Wireless carriers have not disputed the volume of traffic they have sent to Pac-West for termination. If the Commission determines that a reasonable rate for termination of this traffic is the same as the rate in Pac-West's Intrastate Tariff for local termination as Pac-West urges, the Verizon Wireless carriers would owe in excess of \$950,000, plus the applicable late payment charges, for this period.

23. Pac-West filed relevant portions of its currently effective Intrastate Tariff for the termination of traffic by Advice Letters No. 206 and 209A. The rates, terms, and conditions contained in the Intrastate Tariff became effective, were lawfully approved by the Commission, and are presumptively just and reasonable. As the Intrastate Tariff indicates, the rates set forth in Sections 12.1.2 and 13.1 of the Pac-West Intrastate Tariff normally apply in those cases where there is no separately negotiated agreement between the originating carrier and Pac-West. A copy of relevant tariff pages is attached as Attachment B to this Complaint.

24. The Verizon Wireless carriers have not entered into any agreement with Pac-West with respect to the terms, conditions and compensation for handling calls originated by the Verizon Wireless carriers and terminated by Pac-West.

25. The Verizon Wireless carriers have refused to pay Pac-West a reasonable rate for terminating traffic.

26. It is the well established policy of the State of California that all carriers have a duty to originate, transport, and terminate traffic on behalf of interconnecting carriers. This obligation is set forth in P.U. Code Section 558 and Commission decisions interpreting that

section.⁵ Consistent with this legal obligation Pac-West has continued to terminate traffic on behalf of the Verizon Wireless carriers and they continues to send traffic to Pac-West despite their failure or refusal to pay for these services.

27. In D.06-06-055, the Commission found that "...it is appropriate to apply the CLEC's intrastate tariff for termination services afforded to another CLEC where no interconnection

⁵ Commission decisions clarify that a carrier complying with Section 558 must be compensated by the carrier originating the traffic. In C. 04-10-024, the Commission issued D.06-06-055 in which it determined it would apply a carrier's tariff when the two carriers at issue are competitive local exchange carriers ("CLECs" or "CLCs") and have not executed an interconnection agreement or otherwise entered into a reciprocal compensation arrangement. See also, e.g., D.97-11-024, *mimeo*, pp. 5-6: "We conclude that all carriers are obligated to complete calls where it is technically feasible to do so regardless of whether they believe that the underlying intercarrier compensation arrangements for completion of calls are proper. The obligation to complete calls applies not just to [independent] LECs, but equally to all carriers involved in the origination, routing and completion of calls. Whether a call originates or terminates on a carrier's network, the obligation to complete calls is the same. This obligation is a fundamental principle and expectation underlying both state and federal statutes. P. U. Code § 558 requires:

'Every telephone corporation and telegraph corporation operating in this state shall receive, transmit, and deliver, without discrimination or delay, the conversations and messages of every other such corporation with whose line physical connection has been made.'

"The obligation to complete calls is also embodied in the federal statutory language of the [Telecommunications Act of 1996]. As noted by several parties, Section 251(a)(1) of the Act states:

'Each telecommunications carrier has the duty...to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers.' (47 U.S.C. § 251(a)(1).)

"No carrier has the right to block or misdirect the routing of calls to their intended destination because the carrier believes that it is not being properly compensated for such calls. Customers have a right to expect that the telephone network throughout California is reliable, and that their calls will be completed regardless of billing disputes which may exist between carriers involved in the origination, routing and completion of such calls. Ubiquitous network reliability is imperative not just for routine residential and business calls, but particularly where emergency health or safety matters are involved. It is in the public interest that we do not permit carrier disputes to affect the service to end-users, the third party in those disputes. Further, we believe that it is anticompetitive for a carrier to selectively choose to block calls of a competitor ostensibly due to unsatisfactory compensation arrangements. Such a practice will not be tolerated nor permitted to frustrate the development of a competitive telecommunications market.

"While carriers are entitled to just and reasonable compensation for the completion of calls over their facilities, the resolution of any disputes over compensation must necessarily be addressed after, and independent of, the physical routing of calls has been completed. The Commission has provided procedural remedies through the complaint process and other formal and informal dispute-resolution measures in which restitution can be achieved...."

agreement is in effect between the two CLECs.”⁶ In this instance, the Commission should reaffirm that the terms, conditions, and charges set forth in Pac-West’s Intrastate Tariff are reasonable and should be made applicable to the traffic that the Verizon Wireless carriers send to Pac-West for termination. Specifically, the Commission should not enforce Pac-West’s Intrastate Tariff against Verizon Wireless *per se*, but should instead find that the rates set forth in the Intrastate Tariff constitute reasonable compensation to Pac-West for the termination services it provides to the Verizon Wireless carriers.

28. Under 47 C.F.R. Section 20.11,⁷ the Verizon Wireless carriers are obligated to pay reasonable compensation to Pac-West for termination of traffic the Verizon Wireless carriers originated.

29. Pursuant to the FCC’s Order on Review and its Memorandum Opinion and Order in *North County Communications Corp. v. MetroPCS California, LLC*,⁸ and other federal authority,⁹ this Commission has the responsibility and authority to determine reasonable compensation owed to Pac-West for terminating intrastate calls that originated on the Verizon Wireless carriers’ CMRS network.

30. The Commission’s jurisdiction to determine reasonable compensation owed to Pac-West for terminating intrastate calls includes intraMTA and interMTA traffic originated by the Verizon Wireless carriers. Upon information and belief, substantially all of the traffic

⁶ *Pac-West Telecomm, Inc., vs. AT&T Communications of California, Inc., Teleport Communications Group of San Francisco, Teleport Communications Group of Los Angeles, Teleport Communications Group of San Diego*, C.04-10-024, June 29, 2006, D.06-06-055 at 33-34 (*reh’g den’d.* D.07-03-016, March 1, 2007).

⁷ “A commercial mobile radio service provider shall pay reasonable compensation to a local exchange carrier in connection with terminating traffic that originates on the facilities of the commercial mobile radio service provider.” 47 C.F.R. §20.11(b)(2).

⁸ See *North County Communications Corp. v. MetroPCS California, LLC*, Order on Review, FCC 09-100 (rel. Nov. 19, 2009) (hereinafter “*North County Order*”) and *North County Communications Corp. v. MetroPCS California, LLC*, Memorandum Opinion and Order, 24 FCC Rcd 3807 (Enf. Bur. rel. Mar. 30, 2009).

⁹ See, e.g., *North County Order*, ¶ 10, fn. 39.

originated by the Verizon Wireless carriers and terminated by Pac-West is intraMTA and intrastate.

31. The Verizon Wireless carriers have entered into interconnection agreements with other local exchange carriers in California under which they have agreed to pay those local exchange carriers for the termination of calls originated on the Verizon Wireless carriers' network.

32. Pursuant to those agreements, the Verizon Wireless carriers have in many instances agreed to pay those carriers termination rates comparable to the rates in Pac-West's Intrastate Tariff.

33. The Commission has approved those agreements between the Verizon Wireless carriers and other carriers. Examples of some currently pending rates are set forth in Attachment C to this complaint.¹⁰

34. The Verizon Wireless carriers have refused or failed to pay Pac-West reasonable rates, including any late payment charges. The Verizon Wireless carriers' actions impose material financial harm on Pac-West.

VI. FIRST CAUSE OF ACTION: THE COMMISSION SHOULD DETERMINE REASONABLE RATES OF COMPENSATION FOR PAC-WEST'S TERMINATION OF THE VERIZON WIRELESS CARRIERS' ORIGINATED TRAFFIC

35. Pac-West incorporates by reference paragraphs 1 through 34, above.

36. The Verizon Wireless carriers are terminating traffic to Pac-West.

37. Pac-West terminates the Verizon Wireless carriers' originated traffic using the same facilities it uses to terminate traffic from other types of carriers.

¹⁰ These pages are Attachment B to the pending Compensation Agreements between the Cal-Ore Telephone Company and Verizon Wireless and between the Ducor Telephone Company and Verizon Wireless, which were filed most on December 7, 2009 with Ducor Telephone Company Advice Letter No. 330 and Cal-Ore Telephone Company Advice Letter No. 329.

38. Pac-West's Intrastate Tariff contains charges that Pac-West imposes on carriers other than CMRS carriers that terminate traffic to Pac-West customers but do not have an interconnection agreement with Pac-West.

39. The provisions of the Intrastate Tariff were approved by the Commission, establishing Pac-West's lawful and reasonable rates for terminating the traffic described therein, including applicable late charges.

40. The Verizon Wireless carriers have refused to pay the Commission-approved reasonable charges contained in the invoices presented by Pac-West for the traffic that the Verizon Wireless carriers originate and deliver to Pac-West.

41. The Verizon Wireless carriers pay other local exchange carriers similar rates for their termination of the Verizon Wireless carriers' originated traffic.

42. Pursuant to 47 C.F.R. Section 20.11, the *North County Order*,¹¹ and other federal authority, the Commission should determine a reasonable rate of compensation for Pac-West's termination of the Verizon Wireless carriers' originated traffic.

43. The Commission should exercise its jurisdiction to determine that the rates Pac-West charges for termination pursuant to its Intrastate Tariff also constitute reasonable compensation for terminating intrastate, intraMTA CMRS calls. To the extent that the Verizon Wireless carriers' originated CMRS traffic sent to Pac-West includes interstate, intraMTA calls¹² or intrastate, interMTA calls, the Commission should determine that Pac-West's tariffed access charge rates constitute as well a reasonable rate of compensation to Pac-West for termination of such Verizon Wireless carriers' calls.

44. Wherefore, Pac-West demands the relief set forth in Section XI below.

¹¹ "[T]here is nothing anomalous about a state commission establishing an intrastate rate to effectuate a compensation right arising from federal law. See, e.g., 47 U.S.C. §§ 251-252." *North County Order*, ¶ 14, fn. 53.

¹² The *North County Order* declined to determine whether such traffic should be addressed only by the FCC. See *North County Order*, ¶ 20, fn. 73.

VII. SECOND CAUSE OF ACTION: THE VERIZON WIRELESS CARRIERS' REFUSAL TO PAY PAC-WEST FOR TERMINATION OF TRAFFIC THAT PAC-WEST IS LEGALLY OBLIGATED TO TERMINATE ON BEHALF OF THE VERIZON WIRELESS CARRIERS CONSTITUTES AN UNJUST AND UNREASONABLE PRACTICE IN VIOLATION OF P.U. CODE SECTION 761

45. Pac-West incorporates by reference paragraphs 1 through 34, above.

46. P.U. Code Section 558 requires all carriers to "receive, transmit, and deliver, without discrimination or delay, the conversations and messages of every other corporation with whose line physical connection has been made."

47. Pac-West has terminated traffic to its customers on behalf of the Verizon Wireless carriers and their customers, as required by P.U. Code Section 558, and continues to do so.

48. The Verizon Wireless carriers have refused to pay reasonable charges to Pac-West for the traffic that they originate and deliver to Pac-West.

49. Section 761 requires carriers to have just, reasonable, proper and adequate practices.

50. The Verizon Wireless carriers' payment to other LECs of termination charges comparable to those set forth in Pac-West's Intrastate Tariff (and in any event more than zero) constitutes an unjust and unreasonable practice in violation of P.U. Code Section 761.

51. Wherefore, Pac-West demands the relief set forth in Section XI below.

VIII. THIRD CAUSE OF ACTION: THE VERIZON WIRELESS CARRIERS' REFUSAL TO PAY PAC-WEST FOR TERMINATION OF TRAFFIC VIOLATES FEDERAL LAW

52. Pac-West incorporates by reference paragraphs 1 through 34, above.

53. Pac-West has terminated the Verizon Wireless carriers' originated CMRS traffic to its customers on behalf of the Verizon Wireless carriers and their customers.

54. "A commercial mobile radio service provider shall pay reasonable compensation to a local exchange carrier in connection with terminating traffic that originates on the facilities of the commercial mobile radio service provider." 47 C.F.R. Section 20.11(b)(2).

55. The Verizon Wireless carriers have refused to pay reasonable compensation for the traffic that they originate and deliver to Pac-West.

56. Once this Commission has determined reasonable compensation for Pac-West's termination of the Verizon Wireless carriers' traffic, the Verizon Wireless carriers are obligated to pay that rate for all traffic Pac-West has terminated for them.¹³

57. Wherefore, Pac-West demands the relief set forth in Section XI below.

IX. FOURTH CAUSE OF ACTION: THE VERIZON WIRELESS CARRIERS' FAILURE TO PAY PAC-WEST FOR TERMINATING THEIR TRAFFIC UNJUSTLY ENRICHES THE VERIZON WIRELESS CARRIERS

58. Pac-West incorporates by reference paragraphs 1 through 34, above.

59. Section 558 requires all carriers to transit and terminate traffic originated by other interconnected carriers. In this case, Pac-West is required to terminate traffic originated by the Verizon Wireless carriers that is destined for Pac-West's customers.

60. California law requires carriers to continue delivering traffic in the event there is a dispute concerning the intercarrier compensation.

61. The Verizon Wireless carriers have originated and continue to originate traffic that Pac-West is legally obligated to terminate, and that Pac-West does terminate.

62. The Verizon Wireless carriers have refused and continue to refuse to pay Pac-West reasonable compensation for terminating their intrastate traffic.

63. By collecting its own charges from its customers for CMRS calls, but refusing to pay legally mandated reasonable termination charges to Pac-West, while continuing to send

¹³ Cf. *North County Order*, ¶ 24 ("The purpose of any conversion of North County's claim back into a formal complaint would, instead, be limited to determining whether, despite the application of the termination rate prescribed by California law, MetroPCS has still failed to pay North County 'reasonable compensation' under rule 20.11") and ¶ 15 ("we expect that, in most instances, litigation following a state commission's rate determination will either be unnecessary or relatively limited in scope.").

traffic that Pac-West is legally obligated to terminate, the Verizon Wireless carriers are unjustly enriched.

64. Wherefore, Pac-West demands the relief set forth in Section XI below.

X. FIFTH CAUSE OF ACTION: THE VERIZON WIRELESS CARRIERS' FAILURE TO PAY PAC-WEST FOR TERMINATING THEIR TRAFFIC CONSTITUTES DISCRIMINATION IN VIOLATION OF P.U. CODE SECTION 453

65. Pac-West incorporates by reference paragraphs 1 through 34, above.

66. Section 453 provides that "No public utility shall, as to rates, charges, service, facilities, or in any other respect, make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage.

67. The Verizon Wireless carriers' payment to other LECs – including their affiliates – of termination charges comparable to those set forth in Pac-West's Intrastate Tariff (and in any event more than zero) constitutes prejudice, disadvantage, and discrimination against Pac-West.

68. The Verizon Wireless carriers have refused and continue to refuse to pay Pac-West reasonable compensation for terminating their traffic.

69. Wherefore, Pac-West demands the relief set forth in Section XI below.

XI. RELIEF REQUESTED

70. As shown above, the Verizon Wireless carriers' refusal to pay Pac-West's reasonable charges for termination of their customers' traffic, a function that Pac-West is legally obligated to provide, violates the federal law and the P.U. Code, constitutes an unreasonable and unlawful practice, and unjustly and unreasonably enriches the Verizon Wireless carriers.

71. Wherefore, for the reasons set forth above, Pac-West requests that the Commission:

a. Find that Pac-West's Commission-approved and presumptively reasonable tariffed rates for termination of switched access and local traffic, as set forth in Pac-West's Intrastate Tariff, constitute reasonable compensation to Pac-West for terminating traffic from the Verizon Wireless carriers;

b. Order the Verizon Wireless carriers to pay to Pac-West all charges they have incurred during the time period relevant to this complaint for termination of intrastate, intraMTA traffic pursuant to those reasonable local termination rates;

c. Order the Verizon Wireless carriers to pay to Pac-West all charges they have incurred for termination of intrastate, interMTA traffic pursuant to those reasonable intrastate access charge rates;

d. Order the Verizon Wireless carriers to pay to Pac-West all charges they have incurred for termination of interstate traffic pursuant to those reasonable intrastate access charge rates;

e. Order the Verizon Wireless carriers to pay all charges they incur after the filing of this complaint and all future charges they incur for terminating traffic to Pac-West pursuant to these reasonable rates;

f. Order the Verizon Wireless carriers to pay to Pac-West late payment charges on all amounts past due;


g. Order the Verizon Wireless carriers to pay to Pac-West all of the due and payable charges set forth above within five business days of a Commission decision in this matter; and

h. Grant such other relief or impose such sanctions on the Verizon Wireless carriers as the Commission may deem appropriate.

Dated: January 26, 2009, at Tiburon, California.

Respectfully submitted,

PAC-WEST TELECOMM, INC.

By: 

James M. Tobin
William C. Harrelson
August O. Stofferahn
Tobin Law Group
1628 Tiburon Blvd.
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Attorneys for Pac-West Telecomm, Inc.

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Pac-West Telecomm, Inc. (U5266C),

Complainant

vs.

Cellco Partnership (U3001C), Los Angeles SMSA Limited Partnership (U3003C), Verizon Wireless, LLC (U3029C), Fresno MSA Ltd. Partnership (U3005C), Sacramento Valley Ltd. Partnership (U3004C), GTE Mobilnet of CA, Ltd. Partnership (U3002C), GTE Mobilnet of Santa Barbara (U3011C), Modoc RSA Limited Partnership (U3032C), and California RSA No. 4 Ltd. Partnership (U3038C) jointly dba Verizon Wireless

Defendant

C. _____

VERIFICATION

I am an officer of Pac-West Telecomm, Inc. and I am authorized to make this verification on its behalf. The statements in the foregoing Complaint are true of my own knowledge or, based upon my information and belief, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 26, 2010, at Oakland, California.



Denis McCarthy, Chief Financial Officer

ATTACHMENT A

Before the
Federal Communications Commission
Washington, D.C. 20554

<p>North County Communications Corp.,</p> <p style="padding-left: 40px;">Complainant,</p> <p style="padding-left: 40px;">v.</p> <p>MetroPCS California, LLC,</p> <p style="padding-left: 40px;">Defendant.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>File No. EB-06-MD-007</p>
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ORDER ON REVIEW

Adopted: November 19, 2009

Released: November 19, 2009

By the Commission:

I. INTRODUCTION

1. In this Order on Review, we grant in part and otherwise deny the Application for Review¹ filed pursuant to rule 1.115² by North County Communications Corp. ("North County") challenging one holding of the *Bureau Merits Order*³ in this proceeding. We also deny the similar Application for Review filed by MetroPCS California, LLC ("MetroPCS").⁴ In short, according to the parties, the *Bureau Merits Order* erred by holding that, before North County may seek to enforce whatever right to compensation it may have here at the Commission under rule 20.11,⁵ North County must first obtain from the California Public Utilities Commission ("California PUC") a determination of a reasonable rate for North County's termination of intrastate, intraMTA⁶ traffic originated by MetroPCS. For the reasons explained below, we affirm the finding in the *Bureau Merits Order* that under the current rules as interpreted by Commission precedent, the California PUC is the more appropriate forum for determining a reasonable rate for North County's termination of intrastate, intraMTA traffic originated by MetroPCS, and that

¹ Application for Review, File No. EB-06-MD-007 (filed Apr. 29, 2009) ("North County AFR"). See North County Communications Corp.'s Response to MetroPCS California, LLC's Application for Review, File No. EB-06-MD-007 (filed May 14, 2009) ("North County Response"); North County Communications Corp.'s Reply to Response of MetroPCS of California, LLC, File No. EB-06-MD-007 (filed May 26, 2009) ("North County Reply").

² 47 C.F.R. § 1.115.

³ *North County Communications Corp. v. MetroPCS California, LLC*, Memorandum Opinion and Order, 24 FCC Rcd 3807 (Enf. Bur. rel. Mar. 30, 2009) ("*Bureau Merits Order*").

⁴ Application for Review of MetroPCS California, LLC, File No. EB-06-MD-007 (filed Apr. 29, 2009) ("MetroPCS AFR"). See Response of MetroPCS California, LLC to the Application for Review of North County Communications Corp., File No. EB-06-MD-007 (filed May 14, 2009) ("MetroPCS Response"); Reply of MetroPCS California, LLC to the North County Communications Corp. Response to MetroPCS California, LLC's Application for Review, File No. EB-06-MD-007 (filed May 26, 2009) ("MetroPCS Reply").

⁵ 47 C.F.R. § 20.11.

⁶ See, e.g., 47 C.F.R. § 24.202(a) (defining "MTA").

North County should seek to obtain such a determination from the California PUC before seeking to enforce whatever right to compensation it may have here at the Commission under rule 20.11. Rather than dismiss North County's claim without prejudice (as the *Bureau Merits Order* did), however, we will hold the claim in abeyance (in the form of an informal complaint) pending the California PUC's determination of a reasonable termination rate to avoid any prejudice to North County's alleged claim for compensation.

II. BACKGROUND

2. The parties do not challenge the factual findings of the *Bureau Merits Order* (with one exception discussed below).⁷ Therefore, we incorporate those findings by reference.⁸ We provide a summary of those findings below before addressing the parties' legal arguments on review.

3. North County is a licensed competitive local exchange carrier ("CLEC") that provides switched and non-switched local exchange, exchange access, and other telecommunications services in California.⁹ Most, if not all, of North County's end user customers are either chat-line providers or telemarketers.¹⁰

4. MetroPCS is a Commercial Mobile Radio Service ("CMRS") carrier that provides wireless communications services in California.¹¹ MetroPCS is indirectly interconnected with North County in California through the switching facilities of other local exchange carriers ("LECs").¹² MetroPCS does not have a written interconnection agreement with North County.¹³

5. The traffic exchanged between North County and MetroPCS is jurisdictionally intraMTA and intrastate (hereinafter "intrastate" traffic).¹⁴ Moreover, all of the traffic exchanged between the parties is in-bound to North County from MetroPCS.¹⁵ That is because North County's chat line provider customers generate no outbound calls, and, according to North County, legal restrictions preclude its telemarketer customers from calling wireless phones.¹⁶

6. Despite the absence of a written interconnection agreement with MetroPCS, North County began billing MetroPCS for the termination of intrastate traffic sometime in 2003.¹⁷ MetroPCS

⁷ See ¶¶ 19-20, *infra* (discussing the parties' cursory, belated, and scantily supported assertion that some unspecified portion of the traffic at issue is jurisdictionally interstate).

⁸ See *Bureau Merits Order*, 24 FCC Rcd at 3808-3810, ¶¶ 3-7.

⁹ *Bureau Merits Order*, 24 FCC Rcd at 3808, ¶ 3.

¹⁰ *Id.* For purposes of this Order, a "chat-line provider" offers a service that "combine[s] multiple incoming calls that happen to arrive in a common time frame, but are otherwise unscheduled by the parties and may result in connecting callers who are unknown to one another." *Bureau Merits Order*, 24 FCC Rcd at 3808, n.7.

¹¹ *Bureau Merits Order*, 24 FCC Rcd at 3808, ¶ 4. See 47 C.F.R. § 20.3 (defining "commercial mobile radio service").

¹² *Bureau Merits Order*, 24 FCC Rcd at 3808, ¶ 4.

¹³ *Id.*

¹⁴ *Bureau Merits Order*, 24 FCC Rcd at 3808-3809, ¶ 5 and nn.11-12. See ¶¶ 19-20, *infra*.

¹⁵ *Bureau Merits Order*, 24 FCC Rcd at 3808-3809, ¶ 5 and n.13.

¹⁶ *Bureau Merits Order*, 24 FCC Rcd at 3808-3809, ¶ 5 and n.14. See 47 U.S.C. § 227(b)(1)(A)(iii); *Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991*, Report and Order, 18 FCC Rcd 14014 (2003) (subsequent history omitted); 47 C.F.R. § 64.1200(a)(1)(iii).

¹⁷ *Bureau Merits Order*, 24 FCC Rcd at 3809, ¶ 6 and n.15.

has not paid North County any amount of money for the traffic terminated by North County.¹⁸ In MetroPCS' view, a default "bill-and-keep" arrangement exists, whereby neither party pays the other for traffic termination.¹⁹ Between August 2005 and approximately June 2006, North County and MetroPCS attempted to negotiate a written interconnection agreement, without success.²⁰

7. Upon reaching an impasse in its negotiations with MetroPCS regarding a written interconnection agreement, North County filed a formal complaint²¹ against MetroPCS pursuant to section 208 of the Communications Act of 1934, as amended (the "Act").²² Count I of the Complaint alleged that MetroPCS is violating rule 20.11(b)²³ by failing to pay North County for terminating traffic originated on MetroPCS' network.²⁴ Count II of the Complaint alleged that MetroPCS is violating section 251(b)(5) of the Act²⁵ and rule 51.301²⁶ by failing to negotiate and execute a written interconnection agreement with North County in good faith.²⁷ Counts III and V of the Complaint alleged that MetroPCS is violating sections 201(b) and 202(a) of the Act,²⁸ respectively, by refusing to enter into a written interconnection agreement with North County.²⁹ Count IV of the Complaint alleged that MetroPCS is violating rule 51.715³⁰ by refusing to enter into an interim interconnection agreement with North County.³¹

8. Based upon thorough and well-reasoned analyses, the *Bureau Merits Order* denied Counts II, III, IV, and V of the Complaint.³² Neither the North County AFR nor the MetroPCS AFR challenges those denials. Therefore, those denials are final,³³ and we do not address them here. The only challenged portion of the *Bureau Merits Order* concerns the dismissal without prejudice of Count I, which we discuss below.

¹⁸ *Bureau Merits Order*, 24 FCC Rcd at 3809, ¶ 6 and n.16.

¹⁹ *Bureau Merits Order*, 24 FCC Rcd at 3809, ¶ 6 and n.17.

²⁰ *Bureau Merits Order*, 24 FCC Rcd at 3809, ¶ 6.

²¹ See, e.g., Second Amended Complaint, File No. EB-06-MD-007 (filed Aug. 24, 2006) ("Complaint").

²² 47 U.S.C. § 208. See *Bureau Merits Order*, 24 FCC Rcd at 3809-3810, ¶ 7.

²³ See, e.g., 47 C.F.R. § 20.11(b) (providing that "[l]ocal exchange carriers and commercial mobile radio service providers shall comply with principles of mutual compensation"); 47 C.F.R. § 20.11(b)(2) (providing that "[a] commercial mobile radio service provider shall pay reasonable compensation to a local exchange carrier in connection with terminating traffic that originates on the facilities of the commercial mobile radio service provider").

²⁴ See, e.g., Complaint at 15-16, ¶¶ 64-68.

²⁵ 47 U.S.C. § 251(b)(5) (providing that "[e]ach local exchange carrier has ... [t]he duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications").

²⁶ 47 C.F.R. § 51.301 (providing, in pertinent part, that "[a]n incumbent LEC shall negotiate in good faith the terms and conditions of agreements to fulfill the duties established by sections 251(b) and (c) of the Act").

²⁷ See, e.g., Complaint at 16-19, ¶¶ 69-76.

²⁸ 47 U.S.C. §§ 201(b) (barring any "unjust and unreasonable" practice in connection with communication service), 202(a) (barring "unjust and unreasonable discrimination" by any carrier "in connection with like communication service").

²⁹ See, e.g., Complaint at 19-20, ¶¶ 77-86; 22-23, ¶¶ 95-103.

³⁰ 47 C.F.R. § 51.715(b) (providing, in pertinent part, that "an incumbent LEC must, without unreasonable delay, establish an interim arrangement for transport and termination of telecommunications traffic at symmetrical rates").

³¹ See, e.g., Complaint at 20-22, ¶¶ 87-94.

³² See, e.g., *Bureau Merits Order*, 24 FCC Rcd at 3814-3817, ¶¶ 16-23.

³³ See, e.g., 47 C.F.R. §§ 0.203(b), 1.102(b), 1.115.

III. DISCUSSION

9. Rule 20.11(b) provides, in pertinent part, that “[a] commercial mobile radio service provider shall pay *reasonable compensation* to a local exchange carrier in connection with terminating traffic that originates on the facilities of the commercial mobile radio service provider.”³⁴ As stated above, Count I of the Complaint alleged that MetroPCS is violating rule 20.11(b) by failing to pay reasonable compensation for North County’s termination of intrastate traffic originated by MetroPCS.³⁵ The Complaint asked the Commission to issue an order (i) prescribing a rate (under section 205 of the Act³⁶) for terminating intrastate traffic between the parties at or above the rate billed by North County to MetroPCS, and (ii) awarding North County past due amounts consistent with the Commission’s prescribed intrastate termination rate, plus reasonable interest.³⁷

10. The *Bureau Merits Order* declined to determine what constitutes “reasonable compensation” in this case and thus declined to prescribe a rate or award damages.³⁸ In doing so, the *Bureau Merits Order* relied on the Commission’s repeated holdings that (i) states have authority to establish rates charged by LECs for termination of intrastate traffic from CMRS providers, and (ii) the Commission has not preempted such state authority.³⁹ Thus, according to the *Bureau Merits Order*, the

³⁴ 47 C.F.R. § 20.11(b)(2) (emphasis added).

³⁵ See, e.g., Complaint at 15-16, ¶¶ 64-68. For purposes of this Order only, we assume, without deciding, that a violation of rule 20.11 would be a violation of the Act cognizable under section 208 of the Act. See *Center for Communications Management Information v. AT&T Corporation*, Memorandum Opinion and Order, 23 FCC Rcd 12249, 12253 at ¶ 11, n.29 (2008); *Global Crossing Telecommunications, Inc. v. Metrophones Telecommunications, Inc.*, 550 U.S. 45 (2007); *Alexander v. Sandoval*, 532 U.S. 275, 284 (2001).

³⁶ 47 U.S.C. § 205.

³⁷ See, e.g., Complaint at 23-26, ¶¶ 104-119; *Bureau Merits Order*, 24 FCC Rcd at 3809-3810, ¶ 7.

³⁸ *Bureau Merits Order*, 24 FCC Rcd at 3810-3811, ¶ 9.

³⁹ *Bureau Merits Order*, 24 FCC Rcd at 3810-3811, ¶ 9, citing *In the Matter of Developing a Unified Inter-carrier Compensation Regime; T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs*, Declaratory Ruling and Report and Order, 20 FCC Rcd 4855, 4861 at ¶ 10 n.41 (2005) (“*T-Mobile Declaratory Ruling*”) (subsequent history omitted) (stating that “the Commission preempted state and local regulations governing the kind of interconnection to which CMRS providers are entitled, but it specifically declined to preempt state regulation of LEC intrastate interconnection rates applicable to CMRS providers”); *Airtouch Cellular v. Pacific Bell*, Memorandum Opinion and Order, 16 FCC Rcd 13502, 13507 at ¶ 14 (2001) (stating that the determination of the actual rates charged for intrastate LEC-CMRS interconnection is left to the states); *In the Matter of Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, Notice of Proposed Rulemaking, 11 FCC Rcd 5020, 5072 at ¶ 109 (1996) (subsequent history omitted) (stating that the Commission’s LEC-CMRS mutual compensation rules do not preclude the states from setting the actual interconnection rates that LECs and CMRS providers charge); *Equal Access and Interconnection Obligations Pertaining to CMRS*, Notice of Proposed Rulemaking and Notice of Inquiry, 9 FCC Rcd 5408, 5451 at ¶ 104 (1994) (noting that the Commission has declined to preempt state regulation of LEC rates for intrastate interconnection with cellular carriers); *In the Matter of Implementation of Sections 3(N) and 332 of the Communications Act, Regulatory Treatment of Mobile Services*, Second Report and Order, 9 FCC Rcd 1411, 1498 at ¶¶ 231-232 (1994) (subsequent history omitted) (adopting rule 20.11, but declining to preempt state regulation of LEC intrastate interconnection rates); *The Need To Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services*, Memorandum Opinion and Order on Reconsideration, 4 FCC Rcd 2369, 2372 at ¶ 25 (1989) (noting that compensation arrangements regarding intrastate traffic between landline telephone companies and cellular carriers are subject to state regulatory jurisdiction); *The Need To Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services*, Declaratory Ruling, 2 FCC Rcd 2910, 2912 at ¶ 18, 2915 at ¶¶ 44-45 (1987) (noting that intrastate charges for cellular interconnection with landline carriers is subject to intrastate regulation); *Indianapolis Telephone Company v. Indiana Bell Telephone Company Inc.*, Memorandum Opinion and Order, 1 FCC Rcd 228, 229-30 at ¶ 10 (1986) (stating that financial arrangements between cellular and landline carriers regarding intrastate traffic fall within the purview of state regulatory authorities). See *Rural Iowa Independent Telephone Association v. Iowa Utilities Board*, 385 F. Supp.2d 797, 825 (S.D. Iowa 2005), *aff’d*, 476 F.3d 572 (8th

(continued ...)

more appropriate venue for determining what rate will result in “reasonable compensation” for North County’s termination of intrastate traffic originated by MetroPCS is not this Commission, but rather the California PUC, via whatever procedural mechanism it deems appropriate under state law (*e.g.*, complaint proceeding, declaratory ruling proceeding, generic cost or rulemaking proceeding).⁴⁰ In turn, unless and until what constitutes reasonable compensation for North County’s termination of intrastate traffic originated by MetroPCS is determined, the Commission cannot determine whether or to what extent MetroPCS has violated its duty under rule 20.11(b)(2) to pay such compensation.⁴¹ Accordingly, the *Bureau Merits Order* dismissed without prejudice Count I of the Complaint, and stated that, if after the California PUC prescribes a reasonable termination rate North County believes MetroPCS has failed to pay what is owed pursuant to that rate under rule 20.11(b)(2), North County may then seek resolution of such dispute.⁴²

11. North County asks us to either (i) reverse the *Bureau Merits Order* in its entirety, prescribe a reasonable compensation rate under section 205 of the Act, and award damages based on that rate; or (ii) reverse the *Bureau Merits Order* as applied to the period prior to April 29, 2005,⁴³ award damages for that period based on the rates then contained in North County’s California tariff, and hold Count I in abeyance, rather than dismiss it, pending a determination by the California PUC of a reasonable compensation rate for the post-April 29, 2005 period; or (iii) hold Count I in abeyance, rather than dismiss it, pending a determination by the California PUC of a reasonable compensation rate for the whole period at issue.⁴⁴ MetroPCS asks us to either (i) reverse the *Bureau Merits Order* and remand Count I to the Enforcement Bureau with instructions to prescribe a reasonable compensation rate and award damages (if any) based on that rate, or (ii) provide guidance to the California PUC about how to determine a reasonable compensation rate.⁴⁵

12. We have carefully examined the record before the Enforcement Bureau, the *Bureau Merits Order*, and the record on review. In our view, for the reasons set forth in the *Bureau Merits Order* itself, the *Bureau Merits Order* was correct to conclude that the California PUC is the more appropriate forum for determining the reasonable compensation rate for North County’s termination of intrastate, intraMTA traffic originated by MetroPCS. In addition, the parties’ arguments on review regarding the forum issue largely mirror those they already made before the Bureau.⁴⁶ Therefore, we deny the parties’ Applications for Review regarding the forum issue primarily by affirming and incorporating by reference the reasoning and holdings of the *Bureau Merits Order*.⁴⁷ Only a few of the parties’ positions on the

(Continued from previous page)

Cir. 2007) (holding that state commissions may arbitrate indirect interconnection agreements between LECs and CMRS carriers); *Iowa Network Services, Inc. v. Qwest Corporation*, 385 F. Supp.2d 850, 893 (S.D. Iowa 2005) (holding that state commissions may arbitrate indirect interconnection agreements between LECs and CMRS carriers).

⁴⁰ *Bureau Merits Order*, 24 FCC Rcd at 3810-3811, ¶ 9.

⁴¹ *Id.*

⁴² *Id.*

⁴³ April 29, 2005 is the effective date of the *T-Mobile Declaratory Ruling*, according to North County. *See, e.g.*, North County AFR at 15, n.55. We accept North County’s assertion for purposes of this Order.

⁴⁴ *See* North County AFR; North County Response; North County Reply.

⁴⁵ *See* MetroPCS AFR; MetroPCS Response; MetroPCS Reply.

⁴⁶ Contrary to the parties’ contention, the Enforcement Bureau did not hold that only a state commission has jurisdiction to determine what constitutes “reasonable compensation” under section 20.11 of the Commission’s rules. *See, e.g.*, North County AFR at 1, 6, MetroPCS AFR at 3, 5. Thus, by affirming the *Bureau Merits Order*, we do not hold that the Commission lacks such jurisdiction. Rather, we merely affirm the Bureau’s finding that the state commission, in this instance, is the more appropriate forum.

⁴⁷ *Bureau Merits Order*, 24 FCC Rcd at 3810-3814, ¶¶ 8-15.

forum issue warrant further discussion, which we provide below.

13. Most of the parties' arguments on review (that warrant express discussion here) rest on one fundamental proposition: the *Bureau Merits Order* allegedly misinterpreted the Commission's holdings and purposes in the *T-Mobile Declaratory Ruling*. In the *T-Mobile Declaratory Ruling*, the Commission established, *inter alia*, that after the effective date of that order, (i) LECs could not impose compensation obligations for non-access CMRS traffic pursuant to tariff, and (ii) an incumbent LEC could request interconnection from a CMRS carrier and invoke the negotiation and arbitration procedures set forth in section 252 of the Act.⁴⁸ According to North County and MetroPCS, those two holdings, read together, mean that the Commission intended to reserve for itself, and exclude the states from, the task of establishing rates for a CLEC's termination of CMRS traffic.⁴⁹ Thus, in the parties' view, the *Bureau Merits Order* conflicts with the Commission's *T-Mobile Declaratory Ruling* by allowing a state (the California PUC) to establish rates for North County's (a CLEC's) termination of MetroPCS traffic (CMRS traffic).⁵⁰

14. We disagree with the parties. As the *Bureau Merits Order* aptly observes, the *T-Mobile Declaratory Ruling* expressly acknowledges the Commission's many prior orders declining to preempt state regulation of intrastate rates that LECs charge CMRS providers for termination, and then does not alter or amend those orders.⁵¹ Moreover, the *T-Mobile Declaratory Ruling* does not purport to limit the states' general authority to regulate rates for intrastate traffic as preserved by section 2(b) of the Act, except that LECs cannot impose compensation obligations for non-access CMRS traffic pursuant to state tariff.⁵² Therefore, the better application of the *T-Mobile Declaratory Ruling* to the situation here is the one reached by the *Bureau Merits Order*: consistent with the Commission's repeated refusals to preempt state authority in this regard, the California PUC is the more appropriate venue for determining what constitutes a "reasonable compensation" rate under rule 20.11 for North County's termination of intrastate traffic originated by MetroPCS,⁵³ and the California PUC may employ whatever non-tariff procedural mechanism it deems appropriate under state law, as long as such mechanism affords interested parties an opportunity to be heard prior to the determination of the rate.⁵⁴

15. The parties lament that the *Bureau Merits Order* creates the risk of piecemeal litigation,

⁴⁸ See, e.g., *T-Mobile Declaratory Ruling*, 20 FCC Rcd at 4860, ¶ 9.

⁴⁹ See, e.g., North County AFR at 12 and n.46.

⁵⁰ See, e.g., North County AFR at 8-13; MetroPCS AFR at 13-15.

⁵¹ *Bureau Merits Order*, 24 FCC Rcd at 3812-3813, ¶ 12. See, e.g., *T-Mobile Declaratory Ruling*, 20 FCC Rcd at 4860-61, ¶ 10.

⁵² *Bureau Merits Order*, 24 FCC Rcd at 3812-3813, ¶ 12; 47 U.S.C. § 152(b).

⁵³ Despite the parties' protestations to the contrary, see, e.g., North County AFR at 2, 6-7, 12-13; MetroPCS AFR at 3-5, 8-15; MetroPCS Response at 5-6, there is nothing anomalous about a state commission establishing an intrastate rate to effectuate a compensation right arising from federal law. See, e.g., 47 U.S.C. §§ 251-252.

⁵⁴ See, e.g., *Bureau Merits Order*, 24 FCC Rcd at 3810-3811, ¶ 9 (listing as procedural examples a complaint proceeding, a declaratory ruling proceeding, and a generic cost or rulemaking proceeding, all of which historically have afforded interested parties an opportunity to be heard before a ruling is rendered). See also *T-Mobile Declaratory Ruling*, 20 FCC Rcd at 4858-4859, ¶ 7 n.32 (noting that many state commissions had allowed LECs' wireless termination tariffs to go into effect without prior investigations). The parties point out that, since the *T-Mobile Declaratory Ruling*, a few state commissions have declined to arbitrate interconnection agreements between CLECs and CMRS providers. See, e.g., North County AFR at 5, 9. As the *Bureau Merits Order* correctly observes, however, those state commission decisions have only concerned processes authorized by section 252 of the Act; thus, those state commission decisions do not indicate that state commissions will decline to exercise their general authority under state law to regulate rates for intrastate traffic as preserved by section 2(b) of the Act. *Bureau Merits Order*, 24 FCC Rcd at 3813, ¶ 12, n.45.

which could be cumbersome, time-consuming, and expensive.⁵⁵ The parties point out that they (and any future parties who are similarly situated) may have to litigate once to establish a rate, and then perhaps again to establish other interconnection terms and a damages amount.⁵⁶ However, as the *T-Mobile Declaratory Ruling* observes, most small LECs, such as CLECs like North County, are only *indirectly* interconnected with CMRS carriers like MetroPCS.⁵⁷ Consequently, if and when CLECs and CMRS carriers have interconnection disputes, it is likely that those disputes will largely, if not entirely, concern only compensation. Indeed, North County states here that the parties have agreed to all interconnection terms except North County's termination rate.⁵⁸ Thus, we expect that, in most instances, litigation following a state commission's rate determination will either be unnecessary or relatively limited in scope. Accordingly, we do not find persuasive the parties' contention that allowing state commissions to establish rates governing CLECs' termination of intrastate CMRS traffic will be procedurally onerous.

16. The parties proffer several other policy arguments why, despite past Commission orders to the contrary, we should in this complaint proceeding effectively preempt the California PUC's authority to regulate North County's intrastate termination rates as applied to MetroPCS's traffic.⁵⁹ The *Bureau Merits Order* correctly responded to those arguments as follows:

Without commenting one way or another on the merits of MetroPCS's policy arguments, we decline MetroPCS's suggestion to preempt such state authority in the context of this complaint proceeding. Whether to depart so substantially from such long-standing and significant Commission precedent is a complex question better suited to a more general rulemaking proceeding.⁶⁰

MetroPCS expresses special concern that allowing state commissions to set CLEC rates for termination of intrastate CMRS traffic will undermine the policy of promoting national uniformity of CMRS regulation.⁶¹ We disagree with MetroPCS's premise. Moreover, by ruling that incumbent LECs may invoke state processes under section 252 of the Act to reach interconnection agreements with CMRS carriers, the Commission in the *T-Mobile Declaratory Ruling* has already demonstrated that, under current law, other interests can sometimes take priority over complete, national uniformity of CMRS

⁵⁵ See, e.g., MetroPCS AFR at 9-12; North County AFR at 12.

⁵⁶ See, e.g., North County AFR at 6-7, 12-13; MetroPCS AFR at 4, 13, 19-20; MetroPCS Response at 5-6.

⁵⁷ *Bureau Merits Order*, 24 FCC Rcd at 3808, ¶ 4; *T-Mobile Declaratory Ruling*, 20 FCC Rcd at 4857-4858, ¶ 5.

⁵⁸ See, e.g., North County AFR at 4.

⁵⁹ See, e.g., North County AFR at 12-13; MetroPCS AFR at 3-5; 8-15; MetroPCS Response at 5-6.

⁶⁰ *Bureau Merits Order*, 24 FCC Rcd at 3814, ¶ 14, citing *In the Matter of Developing a Unified Intercarrier Compensation Regime*, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, 2008 WL 4821547 (2008); *In the Matter of Developing a Unified Intercarrier Compensation Regime*, Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685 (2005); *In the Matter of Developing a Unified Intercarrier Compensation Regime*, Comment Sought on Missoula Intercarrier Compensation Reform Plan, 20 FCC Rcd 4855 (2005); *In the Matter of Developing a Unified Intercarrier Compensation Regime*, Notice of Proposed Rulemaking, 16 FCC Rcd 9610 (2001). The parties point out that no Commission order or court decision precludes the Commission from changing course and deciding to preempt state authority over the termination rates that LECs charge CMRS providers for intrastate traffic. See, e.g., North County AFR at 5, 8-10, 12-13; MetroPCS AFR at 3-5, 8-15. Again, that may be true, but we decline to take such action in this complaint proceeding. See, e.g., *Bell Atlantic-Delaware, Inc. v. Frontier Communications Services, Inc.*, Memorandum Opinion and Order, 16 FCC Rcd 8112, 8120 (2001) ("We are mindful that the Commission has been asked to clarify or revise existing regulations governing the per-call compensation scheme on a going-forward basis. But because this issue has come before us as part of a section 208 complaint proceeding regarding past behavior, we are constrained to interpret our current regulations and orders.").

⁶¹ See, e.g., MetroPCS AFR at 3-4, 7-15.

regulation.

17. North County argues in the alternative that we should distinguish between the period before April 29, 2005 and the period after April 29, 2005.⁶² Specifically, according to North County, we should reverse the *Bureau Merits Order* as applied to the period before April 29, 2005, enforce the termination rates contained in North County's California state tariff before April 29, 2005, and award damages accordingly -- even if we affirm the *Bureau Merits Order* as applied to the period after April 29, 2005.⁶³

18. We disagree with North County. The *Bureau Merits Order* relied on a long line of Commission orders dating back to 1986 in which the Commission declined to preempt the states' authority to set rates for a LEC's termination of intrastate CMRS traffic, and we find that the effective date of the *T-Mobile Declaratory Ruling* has no bearing on that determination. Consistent with those orders, we find that the California PUC is the more appropriate forum for determining a reasonable rate for North County's termination of MetroPCS's intrastate traffic. Therefore, we reject North County's assertion that we, rather than the California PUC, should determine a pre-April 29, 2005 termination rate by simply enforcing the termination rates contained in North County's California state tariff at that time.⁶⁴

19. Finally, the parties assert that we should reverse the *Bureau Merits Order* because some portion of the traffic at issue is allegedly interstate, intraMTA traffic and thus subject only to our exclusive rate-making jurisdiction.⁶⁵ Neither party made this assertion in any of its numerous and voluminous filings prior to the *Bureau Merits Order*. Consequently, section 1.115 of the Commission's rules plainly precludes the parties from now arguing -- for the first time on review -- that any of the traffic at issue is interstate.⁶⁶ Accordingly, we summarily reject this argument and dismiss it as untimely and thus not properly raised.⁶⁷

20. In any event, even if this contention were properly before us, we would reject it. Based on the record before the Bureau and now before us on review, any assertion that the amount of interstate, intraMTA traffic at issue, if any, is anything but trivial is simply not credible. Neither party has provided specific evidence on the record to demonstrate that any of the traffic at issue is, in fact, interstate.⁶⁸ As the *Bureau Merits Order* correctly notes, the record is replete with explicit and implicit

⁶² North County AFR at 13-15. As previously mentioned, North County contends that April 29, 2005 is the effective date of the *T-Mobile Declaratory Ruling*. North County AFR at 15, n.55.

⁶³ See, e.g., North County AFR at 13-15; North County Reply at 6-9.

⁶⁴ Because we reject North County's assertion on that ground, we need not and do not address MetroPCS's contentions that (i) North County's assertion is barred by rule 1.115(c); (ii) North County's California state tariff was unlawful as applied to MetroPCS traffic even before April 29, 2005; (iii) North County's California state tariff, by its own terms, did not apply to termination of MetroPCS's traffic; (iv) North County's claim for damages arising prior to April 29, 2005 is wholly or partially barred by the two-year statute of limitations in 47 U.S.C. § 415; and (v) awarding damages based on traffic terminated prior to April 29, 2005 would undermine Commission policies favoring negotiated interconnection agreements and limiting interim compensation to incumbent LECs. See, e.g., MetroPCS Response at 7-15.

⁶⁵ See North County AFR at 8 n.30; MetroPCS Response at 4-5.

⁶⁶ Rule 1.115(c) provides: "No application for review will be granted if it relies on questions of fact or law upon which the designated authority has been afforded no opportunity to pass." 47 C.F.R. § 1.115(c).

⁶⁷ We expressly dismiss this claim on procedural grounds. Cf. *BDFCS, Inc. v. FCC*, 351 F.3d 1177, 1183-84 (D.C. Cir. 2003) (upholding the Commission's dismissal on procedural grounds of arguments not first presented to the bureau).

⁶⁸ For example, North County belatedly asserts in a single, unsupported footnote in its Application for Review that the parties have never stipulated that the traffic at issue is all intrastate, and that "this is simply not the case." North
(continued ...)

references to the traffic at issue as traveling between end users *within* the State of California. Despite multiple opportunities to present evidence to the Bureau and on review, the parties have failed to provide any factual basis for the conclusory statements they now make. Moreover, the parties never before described any of the traffic at issue as interstate intraMTA, despite being directed by Commission staff to address whether the California PUC is a proper forum for this dispute.⁶⁹ Even now, on review, the parties make their interstate assertion cursorily,⁷⁰ belatedly,⁷¹ and with no specific evidentiary support, as required by our rules.⁷² Tellingly, neither party provides any indication – not even a rough estimate – as to the amount of traffic at issue that is allegedly interstate, intraMTA. Thus, the record permits no other conclusion than that the amount of interstate, intraMTA traffic at issue – if any – is *de minimus*. Therefore, even if the parties’ interstate claim were properly presented, we would affirm the conclusion of the *Bureau Merits Order* that the traffic at issue is intrastate, intraMTA and thus subject to the general rate-making jurisdiction of the California PUC.⁷³

21. Recognizing that we might affirm the *Bureau Merits Order*, MetroPCS asks, in the alternative, that we provide guidance to the California PUC about how to establish a reasonable termination rate under the particular facts of this case.⁷⁴ MetroPCS focuses especially on the facts that the traffic at issue is unidirectional towards North County and routed entirely to chat-lines.⁷⁵ We decline MetroPCS’s request. We believe that the California PUC is fully equipped to determine a reasonable termination rate under the specific circumstances presented.⁷⁶

22. Notwithstanding all of the foregoing, we do believe that one aspect of the *Bureau Merits Order* warrants modification. The *Bureau Merits Order* dismissed without prejudice Count I of

(Continued from previous page)

County AFR at 8, n.30. Similarly, MetroPCS now contends, in response to North County’s belated assertion, that some unspecified portion of the traffic is interstate. MetroPCS Response at 4-5.

⁶⁹ *Bureau Merits Order*, 24 FCC Rcd at 3808, ¶ 5, n.12.

⁷⁰ North County makes the assertion in a single, unsupported footnote. See North County AFR at 8 n.30.

⁷¹ MetroPCS did not make the assertion until its Response. See Metro Response at 4-5. Indeed, MetroPCS’s Application refers to the traffic at issue as intrastate several times. See MetroPCS AFR at ii, 1, 17.

⁷² Rule 1.720(c) provides: “Facts must be supported by relevant documentation or affidavit.” 47 C.F.R. § 1.720(c). See 47 C.F.R. §§ 1.721(a)(5), 1.724(g), 1.726(c), 1.732(b) (all requiring that factual assertions in formal complaint proceedings be supported by declarations and/or documents).

⁷³ Given the parties’ failure to preserve or support their claim that there is any interstate traffic at issue here, we have no occasion in this adjudicatory proceeding to address whether it would be appropriate for the state commission to determine a rate for any such traffic.

⁷⁴ MetroPCS AFR at 16-17.

⁷⁵ See, e.g., MetroPCS AFR at 17-24.

⁷⁶ After the pleading cycle closed in this review process, CTIA – The Wireless Association (“CTIA”) sought leave to file an “*amicus curiae* letter” supporting the parties’ Applications for Review and asking that this proceeding be converted from “restricted” to “permit-but-disclose” for purposes of the Commission’s *ex parte* rules. Letter dated July 10, 2009 from Christopher Guttman-McCabe, Vice President, Regulatory Affairs, CTIA, to Marlene Dortch, Secretary, FCC (“CTIA Letter”). See 47 C.F.R. §§ 1.1200-1.1216 (setting forth the Commission’s *ex parte* rules). We hereby grant CTIA’s request to file the CTIA Letter, and we have carefully considered the Letter’s contents. See, e.g., *AT&T Corp. v. BellSouth Telecommunications, Inc.*, Order on Reconsideration, 20 FCC Rcd 8578, 8580, at ¶ 6 n.16 (2005) (subsequent history omitted). We deny CTIA’s request to convert this proceeding from “restricted” to “permit-but-disclose,” because CTIA has not shown that the public interest supports changing the *ex parte* status of this adjudicatory proceeding from “restricted” to “permit-but-disclose.” For example, CTIA has not shown that such a conversion is necessary to provide us with a comprehensive record on which to base our decisions. Indeed, all of the arguments asserted in the CTIA Letter were already made by the parties themselves and are expressly addressed either in the *Bureau Merits Order* or in this Order on Review or in both.

the Complaint, stating that the California PUC is the more appropriate venue for determining a reasonable rate for terminating MetroPCS's traffic, and that if North County believes that MetroPCS has failed to pay what is owed pursuant to that rate, it may seek enforcement of any payment obligation under rule 20.11.⁷⁷ Instead, to prevent the possibility that North County may be prejudiced in any way during the pendency of its proceeding to seek a rate determination from the California PUC, we believe the better course is to hold Count I in abeyance rather than dismiss it without prejudice.⁷⁸

23. To effectuate the abeyance, Count I of the Complaint will be converted to an informal complaint, with the File Number of EB-09-MDIC-0041. This conversion is for internal administrative purposes only, and has no effect on the rights of the parties. Once the California PUC determines a reasonable termination rate and its decision is final and no longer subject to judicial review, North County may convert the informal complaint back to a formal complaint by notifying the Commission of its intent to do so within 90 days of the California PUC decision's finality (subject to waiver and extension of such deadline for good cause).

24. We note that the purpose of converting North County's claim back into a formal complaint would not be to review the propriety of the termination rate prescribed by the California PUC. Such a review, if any, of the California PUC's rate prescription would proceed according to whatever mechanism is provided by applicable California law. The purpose of any conversion of North County's claim back into a formal complaint would, instead, be limited to determining whether, despite the application of the termination rate prescribed by California law, MetroPCS has still failed to pay North County "reasonable compensation" under rule 20.11. Such a dispute could arise from a myriad of factors, including but not limited to a continuing disagreement between the parties about whether and to what extent (i) North County's recovery should be limited by the statute of limitations, or (ii) North County is entitled to an award of prejudgment interest.

25. Finally, we note that, in a cursory e-mail submitted long after the formal pleading cycle concluded, North County apparently suggests that the D.C. Circuit's decision in *AT&T Corp. v. FCC*, 978 F.2d 727 (D.C. Cir. 1992) ("*AT&T v. FCC*") establishes a statutory duty on the Commission's part to determine *in this section 208 complaint proceeding* what a reasonable termination rate would be for traffic that MetroPCS delivers to North County.⁷⁹ Because neither party presented this argument predicated upon *AT&T v. FCC* to the Bureau in advance of the *Bureau Merits Order*, this argument is not properly before the Commission in this review proceeding.⁸⁰

26. *AT&T v. FCC* would not be controlling here, in any event. That case involved a section 208 complaint for injunctive relief and damages that AT&T filed against MCI alleging that MCI had violated the Communications Act by charging rates that were not filed in federal tariffs. The FCC had dismissed that complaint without determining whether AT&T's conduct violated the Act (and, thus, without determining whether damages were warranted), concluding instead that the lawfulness of MCI's conduct should be resolved in a broader rulemaking proceeding. The Court of Appeals set the Commission's order aside, holding that because the agency's contemplated rulemaking proceeding, by definition, could develop rules that would "operate[] only *prospectively*," it was "a logical *non sequitur*"

⁷⁷ See, e.g., *Bureau Merits Order*, 24 FCC Rcd at 3810-3811, ¶ 9.

⁷⁸ Cf., e.g., *Reiter v. Cooper*, 507 U.S. 258, 267-68 (1993); *American Association of Cruise Passengers v. Cunard Line, Ltd.*, 31 F.3d 1184, 1187-88 (D.C. Cir. 1994) (both holding that a federal court should stay rather than dismiss a complaint if doing so is necessary to prevent prejudice to the plaintiff during the pendency of a primary jurisdiction referral).

⁷⁹ See Letter from Michael Hazzard, Counsel for North County, to Marlene H. Dortch, Secretary, FCC, File No. EB-06-MD-007 (filed Nov. 16, 2009), Exhibit A.

⁸⁰ See 47 C.F.R. § 1.115(c) (providing that "[n]o application for review will be granted if it relies on questions of fact or law upon which the designated authority has been afforded to opportunity to pass").

to address in such a proceeding a complaint challenging the lawfulness of (and seeking damages for) conduct “under present law.”⁸¹ Here, by contrast, we are not dismissing North County’s complaint at all, but rather holding it in abeyance while the parties seek a determination by the California PUC of what is a reasonable rate under Rule 20.11. Unlike in *AT&T v. FCC*, that determination will be made under existing law, and North County may later seek redress (and possible retrospective relief) – again under existing law – if MetroPCS has not been paying the rate that the California PUC determines to be reasonable.⁸²

IV. ORDERING CLAUSES

27. IT IS ORDERED, pursuant to sections 4(i), 4(j), 201, 208, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 201, 208, and 332, and sections 1.115, 1.721-1.736, and 20.11, of the Commission’s rules, 47 C.F.R. §§ 1.115, 1.721-1.736, and 20.11, that North County’s Application for Review is GRANTED in part and otherwise DENIED, as described herein.

28. IT IS FURTHER ORDERED, pursuant to sections 4(i), 4(j), 201, 208, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 201, 208, and 332, and sections 1.115, 1.721-1.736, and 20.11, of the Commission’s rules, 47 C.F.R. §§ 1.115, 1.721-1.736, and 20.11, that MetroPCS’s Application for Review is DENIED.

29. IT IS FURTHER ORDERED, pursuant to sections 4(i), 4(j), 201, 208, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 201, 208, and 332, and sections 1.115, 1.721-1.736, and 20.11, of the Commission’s rules, 47 C.F.R. §§ 1.115, 1.721-1.736, and 20.11, that the *Bureau Merits Order* in MODIFIED in part and otherwise AFFIRMED, as described herein.

30. IT IS FURTHER ORDERED, pursuant to sections 4(i), 4(j), 201, 208, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 201, 208, and 332, and sections 1.115, 1.711-1.736, and 20.11, of the Commission’s rules, 47 C.F.R. §§ 1.115, 1.711-1.736, and 20.11, that (i) Count I of the Complaint shall be held in abeyance pending the California PUC’s determination of a reasonable rate for North County’s termination of MetroPCS’s intrastate traffic; (ii) such abeyance is hereby effectuated by converting Count I of the Complaint into an informal complaint with the File Number of EB-09-MDIC-0041; and (iii) once North County has exhausted its administrative remedies with the California PUC and the California PUC’s order is no longer subject to judicial review, North County may convert the informal complaint back to a formal complaint by notifying the Commission of its intent to do so within 90 days of the California PUC’s final action.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁸¹ *AT&T v. FCC*, 978 F.2d at 732 (emphasis added to “prospectively”) (citing *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988)).

⁸² See ¶¶ 23-24, *supra*. Other decisions make clear that the *AT&T v. FCC* decision also was predicated in large measure on the court’s view that, by deferring to a separate rulemaking the question of whether MCI’s practice of charging non-tariffed rates violated the Communications Act, the Commission was consciously attempting to insulate previously adopted policies from judicial review. See *AT&T Corp. v. FCC*, 220 F.3d 607, 631 (D.C. Cir. 2000); *American Message Centers v. FCC*, 50 F.3d 35, 41 (D.C. Cir. 1995). No such concern is presented here.

ATTACHMENT B

Pac-West Telecomm, Inc.
4210 Coronado Avenue
Stockton, CA 95204

Schedule Cal. CLC 1-T
Fourth Revised Cal. P.U.C. CLC 1-T Sheet No. 134
Replaces Third Revised Cal. P.U.C. CLC 1-T Sheet No. 134
COMPETITIVE LOCAL CARRIER

SECTION 12 - INTER-CARRIER ARRANGEMENTS

12.1 INTERCONNECTION AND TERMINATION OF LOCAL EXCHANGE CARRIER TRAFFIC

12.1.1 INTERCONNECTION

Arrangements for interconnection by incumbent local exchange carriers and competitive local carriers with the Company's facilities for the completion of local and intraLATA toll traffic will be negotiated on a case by case basis.

12.1.2 TERMINATION AND TRANSIT OF LOCAL AND INTRALATA TOLL TRAFFIC

The Company will complete local calls and intraLATA toll calls, as defined by the distance between the rate centers associated with the calling and called parties' telephone numbers, for incumbent local exchange carriers and competitive local carriers with which the Company has direct or indirect interconnections. The terms, conditions, and compensation methods for handling such calls will be negotiated on a case by case basis; provided that, in cases where no agreement is in place for completion of such calls, the rates provided in the Tariff, following, shall be charged to the originating carrier for calls terminated by the Company or for which the Company provides transit (tandem switching) functions.

A. Rates

1. Local Call Termination

	Charge	
Set Up (per call attempt)	\$.002077	(I)
MOU (Minute of Use)	\$.003403	(I)

2. IntraLATA Toll Termination

The rates for Switched Access Service in 13.1.2, following apply.

3. Transit Traffic

	Charge	
Set Up (per call attempt)	\$.000629	(R)
MOU (Minute of Use)	\$.002993	(I)

Advice Letter No. 206

Decision No.

Issued by:
Lynne Martinez,
Regulatory Affairs
Manager

Date Filed: December 28, 2007

Effective Date: February 1, 2008

Resolution No.

SECTION 13 - SWITCHED ACCESS SERVICE

13.1 INTERCARRIER ARRANGEMENTS

13.1.1 SWITCHED ACCESS SERVICE

Switched Access Service is available to interexchange carriers for originating or terminating Intrastate interexchange (intraLATA or interLATA) calls from or to end user Subscribers over local exchange circuits furnished by the Company. Switched Access Service is also available to incumbent local exchange carriers and competitive local carriers for the completion of non-local ISP traffic. Except as to the charges for specified rate elements set forth herein, the Company concurs with, and Switched Access Service is provided pursuant to, the Intrastate switched access service tariff schedules of Pacific Bell on file with the Commission that are current and in effect as of the effective date of this tariff sheet.¹ Reference is hereby made to those schedules for all terms, conditions, and, except as provided herein, rates applicable to Intrastate switched access services provided by the Company.

13.1.2 NON-LOCAL ISP TRAFFIC

In the event the Commission rules that traffic to Internet Service Providers (ISPs) is non-local, then Non-Local ISP (NOLISP) Switched Access will apply to such traffic. NOLISP traffic is traffic to an ISP where the originating and terminating numbers are assigned to rate centers in the same local calling area. When NOLISP traffic is completed over Local Interconnection Trunks, the terms, conditions, and reciprocal compensation methods and rates for handling such calls will be the reciprocal compensation rates specified in the Companies' Interconnection Agreement. When NOLISP traffic is completed over FG-D trunks, the terms, conditions and access rates that apply to other interexchange calls will apply.

13.1.3 RATES

A. INTRASTATE INTEREXCHANGE (intraLATA or interLATA) CALLS

The rates shown apply to the specified elements except in cases where Switched Access Service is provided jointly by the Company and another interconnecting local exchange carrier under a meet-point billing agreement approved by the Commission that provides for a single tariff/tariff billing for such services at the rates of such other carrier.

Rate Element	Charge	
Tandem Termination (per access minute)	\$0.000000	
Network Interconnection Charge (per access minute)	\$0.000000	
Local Switching	\$0.018494	(C)

¹ See Pacific Bell Cal P.U.C. Schedule No. 175-T

ATTACHMENT C

COMPENSATION AGREEMENT

BETWEEN

CAL-ORE TELEPHONE CO.

AND

VERIZON WIRELESS

Attachment B

Rates and Ratios for Calculating Compensation

- 1) The rate for Local Traffic shall be \$0.00692 per minute of use.
- 2) The interMTA factor is 0%. The rate for interMTA traffic is based on RLEC's applicable access tariff.
- 3) Traffic Factors:
 - a) Land to Mobile 10%
 - b) Mobile to Land 90%

COMPENSATION AGREEMENT
BETWEEN
DUCOR TELEPHONE COMPANY
AND
VERIZON WIRELESS

Attachment B

Rates and Ratios for Calculating Compensation

- 1) The rate for Local Traffic shall be \$0.01096 per minute of use.
- 2) The interMTA factor is 2%. The rate for interMTA traffic is based on RLEC's applicable access tariff.
- 3) Traffic Factors:
 - a) Land to Mobile 18%
 - b) Mobile to Land 82%